2003

Jacobsen Construction v. Teton Builders : Brief of Appellee

Utah Supreme Court

Stephen E. W. Hale, Jeffrey D. Stevens, Matthew J. Ball; Parr, Waddoups, Brown, Gee & Loveless; Attorneys for Appellee.
R. Stephen Marshall, Erik A. Olson; Durham, Jones, Pinegar; Attorneys for Appellants.

IN THE UTAH SUPREME COURT

JACOBSEN CONSTRUCTION COMPANY, INC., a Utah corporation, Plaintiff and Appellee, v. TETON BUILDERS, a Wyoming corporation; and THOMAS R. HUNTER, an individual, Defendants and Appellants.	**BRIEF OF APPELLEE** Supreme Court No. 20030727-SC red2

APPEAL FROM AN INTERLOCUTORY ORDER OF THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY HONORABLE ROBERT K. HILDER, DISTRICT COURT JUDGE

R. Stephen Marshall (2097)
Erik A. Olson (8479)
DURHAM JONES & PINEGAR, P.C.
111 East Broadway, Suite 900
Salt Lake City, Utah 84111
Telephone: (801) 415-3000

Attorneys for Appellants Teton Builders & Thomas R. Hunter

Stephen E. W. Hale (5285)
Jeffrey D. Stevens (8496)
Matthew J. Ball (9414)
PARR WADDOUPS BROWN GEE & LOVELESS, P.C.
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
Telephone: (801) 532-7840

Attorneys for Appellee Jacobsen Construction Company, Inc.

IN THE UTAH SUPREME COURT

JACOBSEN CONSTRUCTION COMPANY, INC., a Utah corporation, Plaintiff and Appellee, v. TETON BUILDERS, a Wyoming corporation; and THOMAS R. HUNTER, an individual, Defendants and Appellants.	**BRIEF OF APPELLEE** Supreme Court No. 20030727-SC

APPEAL FROM AN INTERLOCUTORY ORDER OF THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY HONORABLE ROBERT K. HILDER, DISTRICT COURT JUDGE

R. Stephen Marshall (2097)
Erik A. Olson (8479)
DURHAM JONES & PINEGAR, P.C.
111 East Broadway, Suite 900
Salt Lake City, Utah 84111
Telephone: (801) 415-3000

Attorneys for Appellants Teton Builders & Thomas R. Hunter

Stephen E. W. Hale (5285)
Jeffrey D. Stevens (8496)
Matthew J. Ball (9414)
PARR WADDOUPS BROWN GEE & LOVELESS, P.C.
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
Telephone: (801) 532-7840

Attorneys for Appellee Jacobsen Construction Company, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Periodicals

STATEMENT OF JURISDICTION

The Utah Supreme Court has appellate jurisdiction over this matter pursuant to Utah Code Ann. § 78-2-2(3)(j) (2003).

ISSUE PRESENTED FOR REVIEW

Jacobsen disagrees with Appellants Teton Builders and Thomas R. Hunter's (sometimes collectively referred to as "Teton Builders") formulation of the issues presented for review. Teton Builders frames the first issue presented for review as if it were established fact that the trial court "contravened Utah public policy and generated duplicative litigation." *See* Brief of Appellant, at 1. Likewise, Teton Builders' statement of the second issue before the Court is contrary to the trial court's decision. Although the trial court determined that the forum selection clause at issue in this case constituted Teton Builders' implied consent to jurisdiction, *see* Hearing Transcript, at 30, Teton Builders' statement of the issue asks whether the trial court abused its discretion when it found that the subject contract did not contain its consent to jurisdiction. *See* Brief of Appellant, at 1. Because Jacobsen disagrees with Teton Builders' statement of the issues presented for review for the reasons stated, Jacobsen sets forth its own statement of the issue in accordance with Rule 24(b)(1) of the Utah Rules of Appellate Procedure as follows:

> Whether the trial court properly exercised its discretion in ruling that pursuant to a subcontract in which Jacobsen, Teton Builders and Hunter agreed that all

"litigation shall take place within Salt Lake County, State of Utah" (where Jacobsen's corporate headquarters are located), and that Wyoming law applied,[1] that Teton Builders and Hunter thereby consented to the jurisdiction of Utah courts, and, therefore, there was a sufficient rational nexus with the State of Utah to enforce the forum selection clause–obviating the need for the trial court to consider whether the otherwise requisite minimum contacts existed to satisfy the Due Process Clause of the United States Constitution?

The trial court's decision to enforce a forum selection clause is reviewed for abuse of discretion by both Utah and Wyoming appellate courts. *See Prows v. Pinpoint Retail Sys.*, 868 P.2d 809, 810 (Utah 1993) (enforcement of forum selection clauses reviewed for abuse of discretion); *see also Durdahl v. National Safety Assocs., Inc.*, 988 P.2d 525, 530 (Wyo. 1999) (affirming trial court's decision to enforce forum selection clause as not abusive of discretion). The existence of personal jurisdiction is a matter of law to be reviewed for correctness. *See Wagner v. Clifton*, 2002 UT 109, ¶ 8, 62 P.3d 440; *Shaw v. Smith*, 964 P.2d 428, 433 (Wyo. 1998). Both aspects of the above-stated issue were raised below. *See* Memorandum Supporting Defendants' Motion to Dismiss, at 7-14 [R. 47-54]; and Memorandum in Opposition to Defendants' Motion to Dismiss, at 2-12 [R. 63-73].

---

[1]*See* Master Subcontract Agreement, § 8(I).

STATEMENT OF THE CASE

I. NATURE OF THE CASE

In June 2002, Jacobsen Construction Company, Inc. ("Jacobsen") and Teton Builders entered into a Master Subcontract Agreement (the "Contract"). *See* Contract, attached to Jacobsen's Complaint as Exhibit "A" [R. 9-17]. By entering into the Contract, Teton Builders agreed to perform rough carpentry framing work on Jacobsen's Four Seasons Resort project (the "Project") located in Jackson Hole, Wyoming. *See* Subcontract Work Order, attached to Jacobsen's Complaint as Exhibit "B," § 2 [R. 20-27]. Thomas R. Hunter ("Hunter"), the president of Teton Builders, personally guaranteed Teton Builders' performance under the Contract. *See* Contract, § 8(B) [R. 9-17]; and Subcontract Work Order, § 1(H) [R. 20-27].

Teton Builders walked off the Project without having completed the work called for by the Contract. Jacobsen was forced to step in and complete of Teton Builders' work. Having done so, Jacobsen brought suit in this action against Teton Builders to recover the cost of completing its work. *See* Complaint [R.1-27]. In accordance with the Contract, which provides that "[a]ll arbitration proceedings and litigation shall take place within Salt Lake County, State of Utah," (the "Forum Selection Clause") Jacobsen filed suit against Teton Builders in the Third Judicial District Court in and for Salt Lake County, State of Utah. Contract, § 7(C) [R. 16].

II. COURSE OF PROCEEDINGS AND DISPOSITION BELOW

Teton Builders and Hunter moved the trial court to dismiss Jacobsen's Complaint for lack of personal jurisdiction over either defendant. *See* Defendants' Motion to Dismiss for Lack of Personal Jurisdiction [R. 56-57]. Teton Builders argued that the Forum Selection Clause does not confer upon Utah courts personal jurisdiction over Teton Builders. Teton Builders argued that for an exercise of personal jurisdiction to be proper either the Contract must contain the express consent of Teton Builders to the jurisdiction of Utah courts whereby the parties agree to be subject to the jurisdiction of a specified forum, or the traditional "minimum contacts" test must be satisfied to establish jurisdiction over a party to a lawsuit. *See* Memorandum Supporting Defendants' Motion to Dismiss, at 7-12 [R. 47-52]. Applying Wyoming law as required by the Contract, the trial court found that the Contract's Forum Selection Clause is enforceable. *See* Hearing Transcript, a copy of which is attached to the Brief of Appellant as Exhibit "C," at 30.[2] Then the trial court applied Utah law to the question of whether it could properly exercise personal jurisdiction over Teton Builders on the basis of the Forum Selection Clause. The trial court determined that by agreeing to the Forum Selection Clause, Teton Builders implicitly agreed to be subject to personal jurisdiction in Utah, where Jacobsen's corporate headquarters are located. *Id.* Then,

---

[2]Although the trial court record purports to include the transcript, it does not do so. Consequently, citations to the transcript herein refer to the page numbers of the transcript attached to Teton Builders' Brief of Appellant.

applying the "rational nexus" test set forth in *Phone Directories Co. v. Henderson*, 2000 UT 64, 8 P.3d 256, instead of the traditional minimum contacts Due Process analysis, the trial court ruled that Jacobsen's Utah domicile supplied the requisite rational nexus between the contracting parties and the chosen forum. *Id.* The trial court denied Teton Builders' motion to dismiss and this Court granted an interlocutory appeal. *See* Order Denying Defendants' Motion to Dismiss [R. 140-141]; and Order [R. 156].

III. STATEMENT OF FACTS

As part of their bargain with Jacobsen, Teton Builders and Hunter expressly agreed that in the event a dispute arose out of the Contract, "[a]ll arbitration proceedings and litigation shall take place within Salt Lake County, State of Utah." *See* Contract, §7(C) [R. 16]. Teton Builders further agreed with Jacobsen that Wyoming law would govern interpretation of the Contract. *See* Contract, § 8(I) [R. 17].

According to Teton Builders and Hunter, they are Wyoming residents and have never had any contact with Utah.[3] *See* Affidavit of Thomas R. Hunter, ¶¶ 2-19 [R. 37-38]. Jacobsen is a Utah corporation with its headquarters located in West Valley City, Utah. *See* Complaint, at 1 [R. 1]. The Contract was negotiated and executed in Wyoming. *See*

---

[3]Although Jacobsen assumes the truth of Teton Builders' factual assertions on this score for purposes of this appeal, since no discovery has taken place in this case Jacobsen fully reserves the right to contest all facts in the event this Court affirms the trial court's decision, as it should, and remands this case for further proceedings including trial.

Affidavit of Thomas R. Hunter, ¶¶ 11-19 [R. 37-38]. Teton Builders' work pursuant to the Contract was performed in Wyoming. *See* Affidavit of Thomas R. Hunter, ¶ 20 [R. 38].

Having walked off Jacobsen's construction project on January 3, 2003, before completing its work, on April 9, 2003, Teton Builders filed a mechanics' lien encumbering the improved real property. *See* Complaint, at 3 [R. 3]; and Affidavit of Thomas R. Hunter, ¶ 22 [R. 39]. Among other defects, Teton Builders' mechanics' lien claim was untimely, and Jacobsen, on behalf of the owner of the Project, petitioned the Ninth Judicial District Court of Teton County, State of Wyoming, to strike and release the lien. After a hearing on May 23, 2003, the court granted Jacobsen's petition and ordered Teton Builders' mechanics' lien stricken. *See* Order Regarding Petition to Strike and Release Lien, a certified copy of which is attached hereto as Exhibit "A."[4] Teton Builders subsequently moved for a new trial and to reopen the judgment pursuant to Rule 60(b) of the Wyoming Rules of Civil Procedure. The Wyoming trial court denied Teton Builders' Rule 60(b) motion, and Teton Builders appealed that ruling to the Wyoming Supreme Court. As a practical matter, Teton Builders' appeal challenges the trial court's May 23, 2003 order striking its mechanics' lien and, since

---

[4]Although not part of the record in this case because they were entered after Jacobsen's briefing in the trial court was complete, the Wyoming courts' orders attached hereto are matters of public record in Wyoming and are proper subjects of judicial notice under Rule 201 of the Utah Rules of Evidence. *See State v. Bates*, 22 Utah 65, 68, 83 Am. St. R. 768 (1900) (taking judicial notice of a decision of the United States Supreme Court); *see also* Utah Code Ann. § 78-25-3 ("Entries in public . . . records, made in the performance of his duty by a . . . person in the performance of a duty specially enjoined by the law, are prima facie evidence of the facts stated therein.").

it was not filed until October 2003, it is untimely. *See* Wyo. R. App. P. 2.01(a) (notice of appeal must be filed within 30 days of entry of appealable order) (a copy of this rule is attached hereto as Exhibit "B"); *see also Miller v. Murdock*, 788 P.2d 614, 616 (Wyo. 1990) (failure to comply with deadline for filing appeal is an incurable jurisdictional defect) (citations omitted). The Wyoming Supreme Court has yet to issue an opinion in the case, although it has assigned the case to its expedited docket. *See* Order Assigning Case to Expedited Docket, a certified copy of which is attached hereto as Exhibit "C."

SUMMARY OF ARGUMENTS

The trial court's decision to enforce the Contract's Forum Selection Clause and exercise jurisdiction over Teton Builders and Hunter was correct in all regards. First, the trial court correctly ruled that the Forum Selection Clause is enforceable because it is reasonable, and Utah is not a seriously inconvenient forum. The Forum Selection Clause is reasonable because its enforcement has not been shown to violate any public policy of Wyoming, the state whose law governs interpretation of the Contract. Because Wyoming law governs, the Utah public policies Teton Builders contends would be contravened by enforcing the Forum Selection Clause are irrelevant. Even if the Utah public policies Teton Builders identified were relevant, however, the trial court did not abuse its discretion in disregarding them. Inasmuch as Utah's Unenforceable Agreement Statute identifies a public policy favoring local resolution of construction disputes, it also evidences a Utah public

policy of opening the doors of Utah courts to Utah residents. Teton Builders has never explained either which public policy is stronger, or why the trial court's tacit preference for the latter constituted an abuse of discretion.

Teton Builders other public policy argument – that if this case proceeds there will be duplicative litigation in Utah and Wyoming – is incorrect. The Wyoming litigation to which Teton Builders refers concerns only the propriety of Teton Builders' mechanics' lien. This action involves contract issues that are separate and distinct from Teton Builders' mechanic's lien. There is thus no danger of duplicative litigation.

Teton Builders' claim that the Forum Selection Clause is unenforceable because litigating in Utah would be inconvenient is also unavailing. Since it would be just as inconvenient for Jacobsen to litigate this action in Wyoming as it would for Teton Builders to litigate here, the parties' convenience is irrelevant. In any event, Teton Builders has never offered any evidence in support of its inconvenience claims. In sum, Teton Builders' public policy and inconvenience arguments are inconsequential, and the trial court did not abuse its discretion by ruling that the Forum Selection Clause is enforceable.

Having correctly determined that the Contract's Forum Selection Clause is enforceable, the trial court held that Teton Builders consented to the jurisdiction of Utah courts and that there is a rational nexus between Utah and Jacobsen. The United States Supreme Court recognizes that parties are free to consent to being subject to personal

jurisdiction in courts that they otherwise might not be. Although the Contract does not contain a clause in which Teton Builders explicitly consented to the jurisdiction of Utah courts, the Forum Selection Clause must be interpreted as Teton Builders' consent to the jurisdiction of Utah courts. Under Wyoming law, Teton Builders' consent to the jurisdiction of Utah courts is dispositive of the issue presented by this case. Even under Utah law, the trial court's decision to exercise personal jurisdiction over Teton Builders was proper because, as required by the holding in *Phone Directories Co. v. Henderson*, there is a rational nexus between Utah and Jacobsen.

In sum, the trial court's decision was correct in all regards. Teton Builders agreed to subject itself to the jurisdiction of Utah courts, and the requisite rational nexus to this state exists. This Court should therefore affirm the trial court's denial of Teton Builders' motion to dismiss and remand this case to the trial court for further proceedings including trial.

ARGUMENT

The trial court correctly ruled that Wyoming law governs interpretation of the Contract, and that the Forum Selection Clause is enforceable under Wyoming law. The trial court also correctly ruled that the Forum Selection Clause implicitly includes Teton Builders and Hunter's consent to the jurisdiction of Utah courts. To interpret the Forum Selection Clause any other way would render it meaningless. Finding that Teton Builders agreed to be subject to jurisdiction in the state of Utah, the trial court ruled that it could exercise

jurisdiction over Teton Builders and Hunter in accordance with *Phone Directories Co. v. Henderson*[5] because Jacobsen's Utah domicile supplied the requisite "rational nexus" with this state as articulated in *Henderson*. The trial court's decision was correct in all regards and this Court should so affirm.

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN RULING THAT THE CONTRACT'S FORUM SELECTION CLAUSE IS ENFORCEABLE.

Under Wyoming law, which the Contract, both parties,[6] and the trial court all agree governs interpretation of the Contract, "forum selection clauses are *prima facie* valid and will be enforced absent a demonstration by the party opposing enforcement that the clause is unreasonable or based on fraud or unequal bargaining positions." *Durdahl v. National Safety Assocs., Inc.*, 988 P.2d 525, 528 (Wyo. 1999); *see also Lieberman v. Wyoming.com, LLC*, 82 P.3d 274, 282 (Wyo. 2004) (Wyoming courts enforce contracts as written and accepted by the parties); *Snyder v. Lovercheck*, 992 P.2d 1079, 1089 (Wyo. 1999) ("[I]n private disputes, a court must enforce the contract as drafted by the parties and may not relieve a contracting party from anticipated or actual difficulties undertaken pursuant to the contract."). Teton Builders does not contend that it agreed to the Forum Selection Clause because of fraud or an unequal bargaining position. Rather, it claims the provision is unreasonable. A forum

---

[5]2000 UT 64, 8 P.3d 256.

[6]Brief of Appellant, at 7 ("Under Jacobsen's Contract, Wyoming law governs.").

selection clause can be shown to be unreasonable only by demonstrating either that enforcement would contravene a strong public policy of Wyoming, or that the chosen forum is seriously inconvenient. *See Durdahl*, 988 P.2d at 527, 530. Teton Builders contends that the Forum Selection Clause violates two public policies of the State of Utah. Specifically, Teton Builders claims that Utah public policy disfavors both the remote resolution of local construction disputes and concurrent litigation of similar issues in separate fora. Neither public policy Teton Builders identifies is at all relevant, however, and even if they were, Teton Builders has altogether failed to explain how the trial court's decision to enforce the Forum Selection Clause was an abuse of discretion. Teton Builders also claims that enforcement of the Forum Selection Clause is seriously inconvenient because of the concurrent litigation pending in Utah and Wyoming among the parties to this action. The claim of concurrent litigation as a basis for serious inconvenience is unavailing because the Wyoming litigation involves unrelated issues about the enforceability of Teton Builders' mechanics' lien arising out of work it performed on the Project.

A. Utah Public Policy has No Bearing on the Enforceability of the Contract's Forum Selection Clause.

Teton Builders' contention that the Contract's Forum Selection Clause is unenforceable is founded upon a misapprehension of Wyoming law. According to Teton Builders, "[i]n Wyoming . . . a forum selection clause is not enforceable if it is . . . against a public policy of the forum state . . . ." *See* Brief of Appellant, at 7 (citing *Durdahl v.*

National Safety Assocs., Inc., 988 P.2d 525, 528, 530 (Wyo. 1999)). From this premise Teton Builders asserts that Utah public policy would be offended by enforcement of the Contract's Forum Selection Clause, and therefore, the clause is unenforceable. *See* Brief of Appellant, at 8-13. In fact, under Wyoming law, forum selection clauses are unenforceable only if enforcement would violate a public policy of **Wyoming**, not the forum state in which the lawsuit is brought as Teton Builders claims.

That Wyoming public policy is the appropriate focus of an enforceability analysis under Wyoming law is articulated by the Wyoming Supreme Court's *Durdahl* opinion Teton Builders relies upon. Indeed, given the *Durdahl* opinion, it is clear that if Teton Builders were to bring an action on the Contract in Wyoming, the court would be forced to dismiss on the basis of the Contract's Forum Selection Clause. At issue in *Durdahl* was the enforceability of a contractual forum selection clause requiring that claims arising out of the underlying contract be litigated in Tennessee. When the *Durdahl* plaintiffs brought a breach of contract action in Wyoming, the defendant, which was located in Tennessee, moved to dismiss on the basis of the contract's forum selection clause. *See Durdahl*, 988 P.2d at 527. The trial court granted the defendant's motion and the Wyoming Supreme Court affirmed. After noting that "[i]n order for a forum selection clause to be unreasonable, enforcement must contravene a strong public policy, or the chosen forum must be seriously inconvenient," the court concluded by observing that the plaintiffs had "failed to present any evidence that

the forum selection clause is unreasonable, against any **public policy of this state**, or that the forum of choice in Tennessee is seriously inconvenient." *Id.*, at 527, 530 (emphasis added). Tellingly, the Wyoming Supreme Court never mentioned the public policies of Tennessee, the forum the parties agreed to litigate in.

A forum selection clause is thus unenforceable on public policy grounds under Wyoming law only if the clause contravenes a strong public policy of Wyoming. *Id.* Moreover, the party challenging the enforceability of a forum selection clause bears a "heavy burden" of proving that the clause is unreasonable. *See id.*, at 528. Teton Builders has never presented evidence of any Wyoming public policy, much less suggested that the Contract's Forum Selection Clause runs afoul of any Wyoming public policy. Put another way, Teton Builders has not even attempted to lift the "heavy burden" it bears of proving that the Contract's Forum Selection Clause is unreasonable.

Instead of identifying Wyoming public policies that may be implicated by the Contract's Forum Selection Clause, Teton Builders argues that Utah public policy forbids enforcement of the clause. Teton Builders' belief that Utah public policy has any bearing on this case is simply wrong. Neither Utah public policy Teton Builders identifies is at all relevant to the Forum Selection Clause's enforceability, and the trial court cannot have abused its discretion in ruling the Contract's Forum Selection Clause is enforceable.

i. Teton Builders Offered No Evidence to Suggest that Utah's Unenforceable Agreements Statute Expresses the Public Policy of Wyoming or That it Would be Against Utah Public Policy to Bring an Action in This State.

Teton Builders suggests first that the Contract's Forum Selection Clause violates the public policy expressed in Utah's Unenforceable Agreements statute. *See* Utah Code Ann. § 13-8-3(2) (2003). According to Teton Builders, this statute expresses a Utah public policy favoring the in-state resolution of construction disputes involving a Utah resident and a local construction project. *See* Brief of Appellant, at 9. Although recognizing that this case presents the "inverse" situation to that addressed by the statute, *id.*, Teton Builders nonetheless concludes that simply because this case involves a Wyoming construction project, Utah public policy discourages litigation in Utah. Utah's unenforceable Agreements statute, however, is not an expression of Wyoming's public policy – the parties' choice of law.

That Teton Builders altogether ignores the fact that Jacobsen is a Utah resident is telling. Indeed, even assuming that Utah public policy does favor local resolution of disputes involving local construction projects, the very statute Teton Builders relies upon demonstrates that Utah public policy also favors local resolution of disputes involving residents of this state. *See* Utah Code Ann. § 13-8-3(2) (purporting to invalidate forum selection clauses only when the construction project is located in Utah **and** one of the parties to the contract is domiciled in Utah). Teton Builders has never addressed the question of

which public policy evidenced by Utah's Unenforceable Agreements statute is stronger. Teton Builders can thus hardly claim that the trial court's tacit decision to prefer the latter was unreasonable. In any event, whether Teton Builders' contention about Utah's Unenforceable Agreements statute is correct is wholly immaterial to this case. As explained above, under Wyoming law – which all agree governs interpretation of the Contract – a forum selection clause can only be shown to be unreasonable, and thus unenforceable, by reference to the public policies of Wyoming.[7] Teton Builders has never identified a single public policy of Wyoming that may be infringed by enforcement of the Contract's Forum Selection Clause.

ii. Enforcing the Contract's Forum Selection Clause will Not Result in Duplicative or Bifurcated Litigation.

The second Utah public policy Teton Builders identifies is as irrelevant as the first. Teton Builders claims that if Jacobsen's Utah action is allowed to go forward it will be subjected to unfair, inconvenient, duplicative litigation involving the same issues in two

---

[7]Teton Builders' citation of *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), for the proposition that the forum state's public policies are significant is inapposite. The *Bremen* Court did not purport to announce either a constitutional mandate or the law of Wyoming. Rather, the Court confined application of the principles it announced to federal district courts sitting in admiralty. *See id.*, at 10. Teton Builders' citation of *Trillium U.S.A., Inc. v. Board of County Comm'rs*, 2001 UT 101, 37 P.3d 1093 for the proposition that Utah courts look to Utah public policy when deciding whether to extend comity to another state ignores the fact that the *Trillium* court also observed that "in applying principles of comity, we believe it is proper to give the trial court broad discretion." *Id.*, ¶ 18. Teton Builders also ignores the fact that the trial court considered its comity argument below and determined that comity would not suffer if it exercised jurisdiction over them.

states at the same time. *See* Brief of Appellant, at 10-11. This is so, Teton Builders contends, because it is entitled to defend its mechanics' lien rights in ongoing litigation in Wyoming. *See id.* According to Teton Builders, the trial court's decision to force Teton Builders to undertake parallel litigation in this state runs afoul of Utah's public policy of avoiding bifurcated litigation and will "lead to a morass of conflicting enforcement issues." *See id.*, 10-11, 13 (citing *Prows v. Pinpoint Retail Sys., Inc.*, 868 P.2d 809 (Utah 1993)). Teton Builders is mistaken about the nature of the Wyoming litigation. That proceeding is strictly limited in scope to the removal of Teton Builders' wrongful mechanics' lien. No other issues or claims can be adjudicated there, and there will thus be no overlap between this litigation and any Wyoming action.

Any danger that Teton Builders will be forced to defend against duplicative actions in Wyoming and Utah is more imagined than real. As noted above, having walked off the job before completing its work, Teton Builders filed a mechanics' lien against the underlying real property on which the Project is located. In addition to being untimely, Teton Builders' purported lien suffered from other procedural flaws. Before Teton Builders attempted to foreclose its mechanics' lien against the owner of the improved real property, Jacobsen petitioned the appropriate Wyoming court for an order striking the lien. *See* Wyo. Stat. Ann. § 29-1-311(b), a copy of which is attached hereto as Exhibit "D" (authorizing property owners to petition for expedited removal of improper liens). The sole purpose of Jacobsen's

action was to have Teton Builders' mechanics' lien removed because it was unlawful. The Wyoming statute allowing for such expedited procedures is much like Utah's statute. *Compare* Wyo. Stat. Ann. § 29-1-311 *with* Utah Code Ann. § 38-9-7. Both permit adjudication only of whether the lien is wrongful – neither provides for litigation of any other issues. *See id.*

Although Teton Builders neglects to mention the fact, its purported mechanics' lien was ordered stricken and released by the Ninth Judicial District Court of Teton County pursuant to Jacobsen's petition. Teton Builders has since tried mightily to persuade the Wyoming trial court to reconsider, but it has been unsuccessful at every turn. Whether Teton Builders even has a mechanics' lien claim to pursue in Wyoming is thus in serious doubt.[8] In any event, Teton Builders' "bifurcated litigation" public policy argument is without merit. The Wyoming litigation Teton Builders alludes to involves only a single issue – the propriety of its mechanics' lien – that has no relevance to this action. There is no overlap and consequently no danger of duplicative or bifurcated litigation.

Teton Builders' argument about personal jurisdiction over United States Fidelity and Guaranty Company ("US Fidelity"), the issuer of Jacobsen's mechanics' lien discharge bond (the "Bond"), is both premature and irrelevant. *See* Wyo. Stat. Ann. § 29-1-310 (providing

---

[8]As noted above, Teton Builders filed an untimely notice of appeal with respect to the order striking its mechanics' lien.

that a mechanics' lien is satisfied if the property owner or contractor files a surety bond equal to one and one-half times the amount of the lien in the appropriate district court). In essence, Teton Builders argues that its claim against the Bond should be resolved in Wyoming because it cannot be resolved in Utah in the absence of evidence that US Fidelity is subject to personal jurisdiction in Utah. *See* Brief of Appellant, at 11-12. Whether US Fidelity is subject to personal jurisdiction in Utah is unimportant, however, because the Bond was never filed in the district court and Teton Builders has no claim against it. As explained in Jacobsen's memorandum in opposition to Teton Builders' motion to dismiss, Jacobsen obtained the Bond as a precaution, in the event that Teton Builders' mechanics' lien were not stricken. *See* Memorandum in Opposition to Defendants' Motion to Dismiss, at 6 [R. 67]. As explained above, Teton Builders' mechanics' lien was stricken, and Jacobsen had no need to file the Bond. There is consequently no bond for Teton Builders to proceed against and no basis for Teton Builders to file suit in either Utah or Wyoming.

To summarize, Teton Builders' contention that it should not be forced to litigate issues in Utah that it is already litigating in Wyoming is meritless. Teton Builders has no basis for litigating anything against Jacobsen in Wyoming. Teton Builders' mechanics' lien has been stricken,[9] and there is no bond to proceed against in either Utah or Wyoming. Other than the

---

[9]Even if Teton Builders did still have a mechanics' lien claim, the claim would be against the property owner, not Jacobsen.

contract counterclaims asserted in its answer to Jacobsen's complaint in this matter – which claims can be adjudicated in Utah as easily as anywhere else – Teton Builders has never asserted any claims in any action in any state against anyone connected with the Project. Put simply, Teton Builders' fear of duplicative litigation is unfounded and no public policy will be impacted by the continuation of this action in Utah where Teton Builders agreed it belongs.[10]

iii. Even if the Wyoming Lawsuit were to Go Forward, there is No Evidence it Would Seriously Inconvenience Anyone.

Teton Builders also contends that enforcement of the Forum Selection Clause would seriously inconvenience it. Any inconvenience Teton Builders might experience by litigating in Utah will, however, be no greater than the inconvenience Jacobsen would encounter if this action were dismissed and it were forced to pursue Teton Builders in Wyoming. Since neither party will be inconvenienced any more than the other would be wherever this case proceeds, the parties' convenience is really a non-issue. In any event, Teton Builders has never offered any evidence of an increase in cost or difficulty associated with litigating in

---

[10]Even in the unlikely event that the Wyoming Supreme Court were to reinstate Teton Builders' mechanics' lien, and Teton Builders were to successfully foreclose its lien and win a judgment against Jacobsen in this action, there would be no "morass of conflicting enforcement issues." *See* Brief of Appellant, at 13. Teton Builders would simply look first to recover its judgment from Jacobsen, and then to its mechanics' lien to the extent of any deficiency.

Utah rather than Wyoming. Teton Builders' claims of serious inconvenience are nothing more than conclusory allegations that are entitled to no weight.

B. The Trial Court did Not Abuse its Discretion in Ruling that The Contract's Forum Selection Clause is Enforceable.

Teton Builders did not carry its "heavy burden" of proving that the Contract's Forum Selection Clause violates Wyoming public policy. Indeed, Teton Builders did not even attempt to shoulder its burden. Instead Teton Builders tried to avoid its burden by misinterpreting the holding in *Durdahl* and concentrating on Utah public policy. Even then, Teton Builders relies only on its incomplete interpretation of Utah's Unenforceable Agreements statute and a mechanics' lien that does not exist.

In Utah jurisprudence, "[a]buse of discretion means that the trial court's ruling is 'beyond the limits of reasonability.'" *State v. Alvarez*, 872 P.2d 450, 456 (Utah 1994) (quoting *State v. Hamilton*, 827 P.2d 232, 239-40 (Utah 1992)); *see also Prows v. Pinpoint Retail Sys.*, 868 P.2d 809, 810 (Utah 1993) (citing *Personalized Mktg. Serv., Inc. v. Stotler & Co.*, 447 N.W.2d 447, 451 (Minn. Ct. App. 1989), for the proposition that a court abuses its discretion in enforcing a forum selection clause where the clause is unreasonable). Given Teton Builders' failure to present any relevant public policy evidence to the trial court in support of its contention that enforcing the Contract's Forum Selection Clause might be unreasonable, the trial court's decision to enforce the clause was hardly "beyond the limits of reasonability." Even if Teton Builders' evidence of Utah public policy were relevant, the

trial court's decision was still reasonable because, as explained above, having failed to even address the public policy favoring local resolution of disputes involving Utah residents, Teton Builders' evidence was significantly less than conclusive or compelling. In short, the trial court's decision to enforce the Forum Selection Clause was reasonable and therefore did not constitute an abuse of discretion. This Court should therefore affirm the trial court's decision to enforce the Contract's Forum Selection Clause.

II. THE TRIAL COURT CORRECTLY RULED THAT TETON BUILDERS AND HUNTER ARE SUBJECT TO PERSONAL JURISDICTION IN UTAH.

Teton Builders' contention that it did not consent to the jurisdiction of the Third Judicial District Court is incorrect. While the Contract does not explicitly contain Teton Builders consent to the jurisdiction of Utah courts, by agreeing to the Contract's Forum Selection Clause, Teton Builders implicitly consented to Utah's exercise of jurisdiction. The courts of Wyoming, whose law governs interpretation of the Contract, would therefore enforce the Forum Selection Clause. *See Durdahl v. National Safety Assocs., Inc.*, 988 P.2d 525, 528 (Wyo. 1999). Even if Utah law governs enforceability of the Forum Selection Clause, however, since Teton Builders waived any objection to the jurisdiction of Utah courts and there is a rational nexus between Utah and one of the parties to the Contract, Teton Builders is subject to the jurisdiction of Utah courts. *See Phone Directories Co., Inc. v.*

Henderson.[11] Consequently, the trial court's denial of Teton Builders' motion to dismiss was entirely proper and this Court should affirm the trial court's decision to exercise jurisdiction.

A. The Contract Impliedly Contains Teton Builders' Consent to the Jurisdiction of Utah Courts.

Although the Contract does not contain a clause in which Teton Builders explicitly consents to the jurisdiction of Utah courts, by agreeing to the Forum Selection Clause, Teton Builders implicitly agreed to be subject to personal jurisdiction in Utah. The United States Supreme Court noted in *Burger King Corp. v. Rudzewicz*, that "because personal jurisdiction is a waivable right" a forum selection clause is just one of the legal arrangements by which a litigant may give "'express or **implied** consent to the personal jurisdiction of the court.'" 471 U.S. 462, 473 n.14 (1985) (quoting *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982) (emphasis added)). Many courts hold that express contractual forum selection clauses – such as the Forum Selection Clause – implicitly include consent to jurisdiction. *See, e.g., Kohler Co. v. Wixen*, 555 N.W.2d 640, 645 (Wis. Ct. App. 1996); *Resource Ventures, Inc. v. Resources Management International, Inc.*, 42 F.Supp. 2d 423, 432 (D. Del. 1999); *Citizen's Bank v. West Shore Surgical Associates, LLC*, 2002 Mass. Super. LEXIS 531, at *2-4 (Mass. Super. Ct. Dec. 2, 2002); *Abacan Technical Services Ltd. v. Global Marine International Services Corp.*, 994 S.W.2d 839, 843 (Tex. Ct.

---

[11]2000 UT 64, 8 P.3d 256.

App. 1999). Otherwise, these courts recognize, a forum selection clause would be meaningless because the contracting party subsequently challenging jurisdiction, as Teton Builders has here, would not have agreed to anything.

The Contract's Forum Selection Clause is meaningless if it does not also constitute Teton Builders' consent to the jurisdiction of Utah courts. If the Forum Selection Clause is not interpreted to include consent to jurisdiction, Teton Builders will nonsensically have consented to resolve contract disputes in this forum without having agreed to participate in such resolution. Courts have a duty to avoid interpreting contracts such that their provisions are nullified in this manner. *See Green River Canal Co. v. Thayn*, 2003 UT 50, at ¶ 17, 486 Utah Adv. Rep. 34 (citing *Jones v. ERA Brokers Consolidated*, 2000 UT 61, at ¶ 16, 6 P.3d 1129); *Examination Mgmt. Servs. v. Kirschbaum*, 927 P.2d 686, 690 (Wyo. 1996) (noting that Wyoming courts "strive to avoid a construction which renders a provision meaningless" when interpreting contracts). Only by construing the Contract's Forum Selection Clause to include Teton Builders' consent to the jurisdiction of Utah courts can the clause have any meaning. Put simply, by signing the Contract and agreeing to be bound by the Forum Selection Clause, Teton Builders waived the right to contest personal jurisdiction.

B. Jacobsen's Utah Domicile Provides the "Rational Nexus" Required by *Henderson*.

Given that Teton Builders impliedly agreed to be subject to personal jurisdiction in Utah, and that Jacobsen is a Utah resident, the trial court's assertion of jurisdiction was

proper. In *Phone Directories Co. v. Henderson*, 2000 UT 64, 8 P.3d 256, a majority of this Court held that forum selection/consent to jurisdiction clauses "create a presumption in favor of jurisdiction and will be upheld as fair and reasonable so long as there is a rational nexus between the forum selected and/or consented to, and either [of] the parties to the contract or the transactions that are the subject matter of the contract." *Id.*, at ¶¶ 14, 22; *see also* Michael J. Wilkins & Judith M. Billings, *Important Utah Decisions*, 14 Utah Bar J. 39, 41 (2001) (noting that the *Henderson* Court held that forum selection/consent to jurisdiction clauses are presumed enforceable so long as there is a rational nexus between the selected forum and either the parties or the underlying transaction). Importantly, the Court held that the requisite nexus need not rise to the level of contact required by Utah's long-arm statute. *Henderson*, 2000 UT 64, at ¶¶ 14, 22. The trial court ruled that this "rational nexus" requirement is satisfied in this case by the fact of Jacobsen's Utah domicile, and accordingly denied Teton Builders' motion to dismiss. *See* Hearing Transcript, at 30.

Teton Builders assails the trial court's application of *Henderson* to this case on the basis of an apparent distinction between consent-to-jurisdiction clauses and forum selection clauses drawn in Chief Justice Howe's concurrence. *See Henderson*, 2000 UT 64, at ¶¶ 21-22. Although Chief Justice Howe appeared to treat such clauses separately – Justice Durham's lead opinion made no distinction – the Chief Justice offered no reason for doing so. *See id.* In any event, he fully concurred in Justice Durham's opinion insofar as it related

to the contractual consent-to-jurisdiction clause at issue. *See id.*, at ¶ 22. Consequently, and given that the Contract's Forum Selection Clause must be interpreted to include Teton Builders' consent to jurisdiction as explained above, *Henderson's* "rational nexus" test should control this case.

Although Teton Builders attempts to characterize this case as a Wyoming real property dispute with no connection to Utah, it is really a Utah contract action involving a Utah resident. Teton Builders' contention that *Henderson's* "rational nexus" requirement is not satisfied by only one contracting party's connection to Utah is also incorrect. While it is true that on its face *Henderson* speaks in terms of a nexus with "the parties to the contract," and not just a nexus with one of the parties, *Henderson* makes sense only if its nexus requirement is satisfied by only one party's connection with Utah. Indeed, if *Henderson* requires that both contracting parties have a Utah connection as Teton Builders implicitly contends, the decision adds nothing to Utah law and *Henderson* might as well never have been decided. In a case where both parties to a contract have a rational nexus with Utah then both are likely, if not certain to be subject to personal jurisdiction in Utah under the traditional long-arm statute/minimum contacts test for specific personal jurisdiction without regard to the existence of a consent-to-jurisdiction clause. *See Henderson*, at ¶ 12. Given that the *Henderson* Court expressly intended to craft a distinct inquiry in cases where jurisdiction is purportedly based on a forum selection/consent-to-jurisdiction clause, that

intent would be undone if there must actually be a rational nexus between Utah and both parties.

In sum, if *Henderson* is to have any significance at all its "rational nexus" requirement must be read to demand a connection between Utah and at least one of the contracting parties, but not both parties. That Jacobsen is headquartered in Utah satisfies the nexus requirement in this case and completely undercuts Teton Builders' contention that "[t]his action . . . is a complete stranger to Utah." *See* Brief of Appellant, at 17.[12] Indeed, Jacobsen is not only incorporated and headquartered in Utah, but all of its executive and significant decision-making functions are conducted here in Utah as Teton Builders acknowledges. *See* Hearing Transcript, at 15 (The Court: "Jacobsen's a party, they're very much a Salt Lake County entity. Why doesn't that satisfy? I mean is that not a rational nexus?" Teton Builders: "Assuming one party is enough, yeah, Jacobsen certainly has a rational nexus to Utah."). Accordingly, the trial court's denial of Teton Builders' motion to dismiss was proper under *Henderson* and this Court should affirm.

---

[12]Teton Builder's description of Jacobsen as "a large general contractor found in multiple states," *see* Brief of Appellant, at 13, is unavailing for several reasons. First, even if it could be described as "large," Jacobsen's size is neither material nor a matter of record in this case. Second, the fact that Jacobsen undertakes projects in other states and therefore temporarily assigns personnel and resources to other states does not change the fact that Jacobsen is permanently headquartered in and operates from Utah.

CONCLUSION

For all of the foregoing reasons, Jacobsen respectfully requests that this Court affirm the trial court's denial of Teton Builders' motion to dismiss and remand this case to the trial court for further proceedings including trial.

DATED this 23rd day of April, 2004.

PARR WADDOUPS BROWN GEE & LOVELESS, P.C.

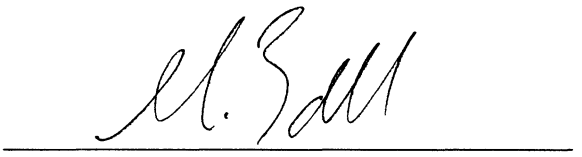
By: _____

Stephen E. W. Hale
Jeffrey D. Stevens
Matthew J. Ball
Attorneys for Jacobsen Construction Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April, 2004, two true and correct copies of the foregoing **BRIEF OF APPELLEE** were served via United States Mail, first-class postage prepaid, on the following:

R. Stephen Marshall
Erik A. Olson
DURHAM JONES & PINEGAR, P.C.
111 East Broadway, Suite 900
Salt Lake City, Utah 84111



Tab A

IN THE DISTRICT COURT OF TETON COUNTY, WYOMING

NINTH JUDICIAL DISTRICT

FILED
TETON COUNTY, WYOMING
03 MAY 23 PM 11 11
CLERK OF DISTRICT COURT

JACOBSEN CONSTRUCTION COMPANY, a Utah corporation, as agent for and acting on behalf of FS JACKSON HOLE DEVELOPMENT COMPANY, and LLC, LOUIS DRYFUS PROPERTY GROUP, INC.,	)	
Plaintiffs,	)	
vs.	)	Civil Action No. 12717
TETON BUILDERS,	)	
Defendant.	)	

ORDER REGARDING
PETITION TO STRIKE AND RELEASE LIEN

On or about April 28, 2003, the Plaintiff filed a Petition for Expedited Proceedings To Strike and Release Lien Pursuant to Wyoming Statute §29-1-311. That matter was assigned to Curt Haws as district court commissioner by Order dated May 13, 2003. That same Order set a hearing date for May 14, 2003. The district court commissioner has filed his report and recommendations following the May 14, 2003 hearing.

Having reviewed the District Court Commissioner's Report and Recommendations (including the summary of testimony offered at the hearing) and the items on file in this matter, the Court makes the following findings of fact and conclusions of law:

1. Jacobsen Construction Company is the primary contractor for the Four Seasons construction project in Teton County, Wyoming.

2. Teton Builders entered into a subcontract agreement with Jacobson Construction Company to provide building materials and labor on the Four Seasons project.

J 35 FU 35#

3. Teton Builders began to perform work on the Four Seasons project in June of 2002.

4. Teton Builders did not provide Jacobsen Construction Company with a written notice of its right to claim a lien within sixty (60) days of the time it first provided materials or services to the Four Season project.

5. Teton Builders' failure to provide Jacobsen Construction Company with the notice required by W.S. § 29-2-211(b) waives Teton Builders' right to claim a lien.

6. January 3, 2003 was the last day Teton Builders performed work on the Four Seasons project at the direction of Jacobsen Construction.

7. Jacobsen Construction posted a notice in compliance with Wyoming Statute §29-2-211 at various prominent places on the project site.

8. The property owner on its own behalf and through its agent Jacobsen Construction provided the notice required by Wyoming Statute §29-2-211 in the working specifications of the project.

9. The Teton Builder lien statement was filed on April 9, 2003.

10. The Teton Builder lien statement was not filed within the time period prescribed by Wyoming Statute § 29-2-106.

11. Because Teton Builders failed to comply with the requirements of Wyoming Statute §§ 29-20-106 and 29-2-211, Teton Builders knew at the time of filing their lien that the lien was groundless.

12. In seeking to expunge the lien filed by Teton Builders, Jacobsen Construction Company has incurred costs and attorneys' fees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. The lien filed by Teton Builders on April 9, 2003 is hereby stricken and released.

2. The Defendant shall pay to the Plaintiff the sum of one thousand dollars ($1,000.00) as damages.

3. The Plaintiff is entitled to recover its costs and reasonable attorneys' fees incurred by reason of the Teton Builders lien. The Plaintiff shall prepare an itemized statement of said costs

and fees and file the same with the Court. The Court shall then review the itemized statement and enter a further order detailing the amount of costs and attorneys' fees to be paid by the Defendant to the Plaintiff.

Dated this 23rd day of May, 2003.

Nancy J. Guthrie
District Court Judge

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served by ~~mail~~/fax upon the following persons at their last known address this 23 day of MAY 2003.

A RICHARD
J BRAZINSKI

By CW

J 33 FU 33A

Tab B

Wyoming Rules of Appellate Procedure

2.01. How and when taken; cross-appeals and dismissals.

(a) An appeal from a trial court to an appellate court shall be taken by filing the notice of appeal with the clerk of the trial court within 30 days from entry of the appealable order and concurrently serving the same in accordance with the provisions of Rule 5, Wyo. R. Civ. P., (or as provided in Wyo. R. Cr. P. 32 (c) (4)). Within five days of the filing of the notice of appeal with the clerk of the trial court, a copy of the notice of appeal shall also be filed with the clerk of the appellate court, and in a criminal case upon the office of public defender and the office of attorney general.

(1) Upon a showing of excusable neglect, the trial court in any action may extend the time for filing the notice of appeal not to exceed 15 days from the expiration of the original time prescribed, provided the application for extension of time is filed and the order entered prior to the expiration of 45 days from entry of the appealable order; appellant shall promptly serve appellee a copy of the order extending the time. If such an order is issued, it shall be appended to the notice of the appeal.

(2) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 15 days of the date on which the first notice of appeal was filed.

(b) If an appeal has not been docketed with the appellate court, the parties, with the approval of the trial court, may dismiss the appeal by stipulation filed in that court, or that court may dismiss the appeal upon motion and notice by appellant.

Tab C

IN THE SUPREME COURT, STATE OF WYOMING

TETON BUILDERS, Appellant (Defendant), v. JACOBSEN CONSTRUCTION COMPANY, a Utah corporation, as agent for and acting on behalf of FS JACKSON HOLE DEVELOPMENT COMPANY, and LLC, LOUIS DREYFUS PROPERTY GROUP, INC., Appellees (Plaintiffs).	)	IN THE SUPREME COURT STATE OF WYOMING FILED No. 03-230 MAR 29 2004 JUDY PACHECO, CLERK by DEPUTY

ORDER ASSIGNING CASE TO EXPEDITED DOCKET

The Court, having carefully considered the appellant's and appellees' briefs in the above-captioned case, and finding that this case should be heard and disposed of by this Court upon the briefs of the parties without oral argument, has directed that this case be assigned to the Expedited Docket; it is therefore,

ORDERED that this case be assigned to the Expedited Docket pursuant to W.R.A.P. 8.01(a) and (c); and,

NOTICE IS HEREBY GIVEN that the appeal of this matter will be taken under advisement and the decision of the Court will be rendered in a written opinion.

DATED this 29th day of March, 2004.

FOR THE COURT:

Judy Pacheco
Clerk of Court

Carol Thompson
by deputy

IN THE SUPREME COURT
STATE OF WYOMING

ITIFIED to be a full, true and correct
y of the original in my custody

ED April 20, 2004

Y PACHECO, CLERK

Carol Thompson

Tab D

Wyo. Stat. § 29-1-311

WYOMING STATUTES ANNOTATED

* THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH THE 2003 REGULAR SESSION *
* ANNOTATIONS CURRENT THROUGH DECEMBER 12, 2003 *

TITLE 29. LIENS
CHAPTER 1. GENERAL PROVISIONS
ARTICLE 3. PRACTICE AND PROCEDURE

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Wyo. Stat. § 29-1-311 (2003)

§ 29-1-311. False or frivolous liens; damages; penalties

(a) Any claim of lien against a federal, state or local official or employee based on the performance or nonperformance of that official's or employee's duties shall be invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of the lien or unless a specific statute authorizes the filing of the lien.

(b) Any person whose real or personal property is subject to a recorded claim of lien who believes the claim of lien is invalid under subsection (a) of this section, was forged, or that the person claiming the lien knew at the time of filing the lien was groundless, contained a material misstatement or false claim, may petition the district court of the county in which the claim of lien has been recorded for the relief provided in this subsection. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or his attorney setting forth a concise statement of the facts upon which the motion is based. The clerk of court shall assign a cause number to the petition and obtain from the petitioner a filing fee of thirty-five dollars ($ 35.00). Upon the filing of the petition the following shall apply:

(i) The court may enter its order, which may be granted ex parte, directing the person claiming the lien to appear before the court at a time no earlier than six (6) nor later than fifteen (15) days following the date of service of the petition and order on the person claiming the lien, and show cause, if any, why the relief provided in this subsection should not be granted;

(ii) The order shall clearly state that if the person claiming the lien fails to appear at the time and place noted, the claim of lien shall be stricken and released, and that the person claiming the lien shall be ordered to pay damages of at least one thousand dollars ($ 1,000.00) or actual damages, whichever is greater, and the costs incurred by the petitioner, including reasonable attorneys' fees;

(iii) The order and petition shall be served upon the person claiming the lien by personal service, or, where the court determines that service by mail is likely to give actual notice, the court may order that service be made by mailing copies of the petition and order to the person claiming the lien at his last known address or any other address determined by the court to be appropriate. Two (2) copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and

to whom it was delivered. The envelopes shall bear the return address of the sender;

(iv) If, following a hearing on the matter the court determines that the claim of lien is invalid under subsection (a) of this section, was forged or that the person claiming the lien knew at the time of filing the lien was groundless or contained a material misstatement or false claim, the court shall issue an order striking and releasing the claim of lien and awarding damages of one thousand dollars ($ 1,000.00) or actual damages, whichever is greater, costs and reasonable attorneys' fees to the petitioner to be paid by the person claiming the lien;

(v) If the court determines that the claim of lien is valid, the court shall issue an order so stating and shall award costs and reasonable attorneys' fees to the person claiming the lien to be paid by the petitioner.

(c) Any person who offers to have recorded or filed a forged or groundless lien in violation of this section with the intent to threaten, harass or intimidate a public official or employee in the performance or nonperformance of his official duties is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars ($ 750.00), imprisonment for not more than six (6) months, or both.

HISTORY: Laws 1997, ch. 127, § 1.

APPLICABILITY. --Absent a recorded claim of lien, which was not required for lien of personal property, district court did not have jurisdiction to apply relief provided by this section. Hoblyn v. Goins, 977 P.2d 1281 (Wyo. 1999).

USER NOTE: For more generally applicable notes, see notes under the first section of this division, subarticle, article, chapter or title.